

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF ALFRED L. HAROLD, Deceased,

Plaintiff-Appellee,

v

MINNESOTA MUTUAL LIFE INSURANCE
COMPANY,

Defendant,

and

GREGORY HAROLD,

Defendant-Appellant.

UNPUBLISHED

September 26, 1997

No. 192341

Oakland Probate Court

LC No. 93-230551-CZ

Before: Smolenski, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Defendant Gregory Harold appeals as of right the order imposing a constructive trust over the proceeds he received as the designated beneficiary of a mortgage life insurance policy following his brother Alfred Harold's death. We affirm.

Defendant and Alfred purchased a home, known as the Rutland property, as tenants in common. They obtained mortgage life insurance from Minnesota Mutual in the amount of the mortgage on the property, and originally named the lender as primary beneficiary and the surviving brother as contingent beneficiary. The Harolds subsequently let the insurance policy lapse, and the original lender transferred the mortgage to another company. A change of beneficiary form naming the survivor of each as the only beneficiary was executed in May 1986. The Harolds reinstated the mortgage life insurance policy with Minnesota in September 1986, naming the surviving brother as the primary beneficiary, but noting on the application that the proceeds of the policy would be used to satisfy the loan taken from the original lender. Following Alfred's death, defendant claimed and received the policy proceeds from Minnesota Mutual. Defendant refused to make any payments on the property,

and plaintiff was forced to sell the property. Defendant then received one-half of the net proceeds from the sale. Plaintiff brought the instant action, alleging that Minnesota Mutual wrongfully paid the proceeds to defendant, and that defendant wrongfully retained the proceeds. The trial court granted summary disposition for Minnesota Mutual, finding that it was required to honor the beneficiary designation on the reinstatement application. A bench trial was then held on plaintiff's claims against defendant. The trial court concluded that defendant had been unjustly enriched when he received the policy proceeds that were intended by the Harolds to be used to satisfy the mortgage loan. A constructive trust was placed over all the proceeds and defendant was ordered to convey the proceeds to plaintiff.

Defendant first argues that the trial court's finding that he was unjustly enriched when he received the insurance proceeds was not supported by the evidence adduced at trial. We disagree. The language of the mortgage life insurance policy reinstatement application, which is signed by both defendant and Alfred, states that the proceeds from the insurance policy were to be used to pay off the mortgage taken out on the Rutland property. Specifically, the application provides:

This application is for mortgage life insurance in the initial amount of \$72,921.88. The term of insurance is 30 years, and the beneficiary is If Alfred L. Harold is deceased, Gregory Harold is beneficiary and verus verus [sic] whoever survives Alfred or Gregory Harold. Proceeds will be used for repayment of loan no. P-47130. [Emphasis added.]

Number P-47130 was the label assigned to the original mortgage loan provided to defendant and his brother by Central State Savings Bank in the amount of \$73,100 for a term of thirty years. The express language of the application supports the trial court's conclusion that defendant and Alfred intended for the proceeds of the policy to be used to satisfy the mortgage loan.

Defendant received \$63,439.11 in proceeds from the insurance policy. Defendant refused to use the funds to repay the loan on the Rutland property, and plaintiff was forced to sell the property. Defendant then received one-half of the \$19,590.90 net proceeds from the sale of the property. The trial court determined that defendant was unjustly enriched when he received and kept the proceeds in contravention of the clear language of the reinstatement application. We find no error in this finding. MCR 2.613. Hence, we conclude that the trial court did not err in imposing a constructive trust over the proceeds. *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 188; 504 NW2d 635 (1993).

Defendant next argues that the trial court's finding that Alfred intended for the insurance proceeds to be used to pay off the mortgage on Rutland property was clearly erroneous in light of the change of beneficiary form that listed only the surviving brother as beneficiary. We find the reinstatement application to be more indicative of the parties' intent, however, because it was executed in September 1986, while the change of beneficiary form was executed in May 1986. Further, the fact that defendant and Alfred named the lender as the primary beneficiary and the surviving brother as the contingent beneficiary when they first obtained the mortgage life insurance indicates that they intended for the insurance proceeds to be applied toward the mortgage. Finally, Minnesota Mutual sent a letter to the Harolds reminding them of the reinstatement policy, and indicating that the Harolds initially obtained the mortgage life insurance for the purpose of protecting the Rutland property. Given these

facts, we cannot conclude that the trial court's finding was clearly erroneous. MCR 2.613; *In re Lewis Estate*, 168 Mich App 70, 74; 423 NW2d 600 (1988).¹

Affirmed.

/s/ Michael R. Smolenski

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

¹ Defendant also raises an argument that the trial court erred in finding that defendant was merely an "accommodational party" in assisting Alfred in obtaining financing for the property. Although the trial court made such a statement in its opinion, the finding is not decisive with respect to the trial court's conclusion that the express language of the reinstatement application evidenced the parties' intent that the proceeds of the policy be used for repayment of the loan.